

David William Wulco AR-7739

Name and Prisoner/Boking Number

California State Prison Sacramento

Place of Confinement

100 Prison Rd

Mailing Address

Riverside, CA 92527-95617

City, State, Zip Code

FILED

Jul 19, 2022

CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

(Failure to notify the Court of your change of address may result in dismissal of this action.)

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA**

David William Wulco

(Full Name of Plaintiff)

Plaintiff,

v.

CASE NO. 2:22-cv-1272-CKD (PC)

(To be supplied by the Clerk)

(1) California Department of Corrections

(Full Name of Defendant)

(2)

(3)

(4)

Defendant(s).

 Check if there are additional Defendants and attach page 1-A listing them

**CIVIL RIGHTS COMPLAINT
BY A PRISONER**

- Original Complaint
 First Amended Complaint
 Second Amended Complaint

A. JURISDICTION

1. This Court has jurisdiction over this action pursuant to:

 28 U.S.C. § 1343(a); 42 U.S.C. § 1983 28 U.S.C. § 1331; Bivens v. Six Unknown Federal Narcotics Agents, 403 U.S. 388 (1971). Other: _____

2. Institution/city where violation occurred: Socorro, CA 93212, North Kern State Prison

B. DEFENDANTS

1. Name of first Defendant: California Department of Corrections. The first Defendant is employed as:
at _____
(Position and Title) _____ (Institution)
2. Name of second Defendant: _____ The second Defendant is employed as:
at _____
(Position and Title) _____ (Institution)
3. Name of third Defendant: _____ The third Defendant is employed as:
at _____
(Position and Title) _____ (Institution)
4. Name of fourth Defendant: _____ The fourth Defendant is employed as:
at _____
(Position and Title) _____ (Institution)

If you name more than four Defendants, answer the questions listed above for each additional Defendant on a separate page.

C. PREVIOUS LAWSUITS

1. Have you filed any other lawsuits while you were a prisoner? Yes No
2. If yes, how many lawsuits have you filed? _____. Describe the previous lawsuits:
 - a. First prior lawsuit:
 1. Parties: _____ v. _____
 2. Court and case number: _____
 3. Result: (Was the case dismissed? Was it appealed? Is it still pending?) _____
 - b. Second prior lawsuit:
 1. Parties: _____ v. _____
 2. Court and case number: _____
 3. Result: (Was the case dismissed? Was it appealed? Is it still pending?) _____
 - c. Third prior lawsuit:
 1. Parties: _____ v. _____
 2. Court and case number: _____
 3. Result: (Was the case dismissed? Was it appealed? Is it still pending?) _____

If you filed more than three lawsuits, answer the questions listed above for each additional lawsuit on a separate page.

D. CAUSE OF ACTION

CLAIM I

1. State the constitutional or other federal civil right that was violated: *8th amendment*
Cruel and unusual punishment

2. Claim I. Identify the issue involved. Check **only one**. State additional issues in separate claims.

<input type="checkbox"/> Basic necessities	<input type="checkbox"/> Mail	<input type="checkbox"/> Access to the court	<input type="checkbox"/> Medical care
<input type="checkbox"/> Disciplinary proceedings	<input type="checkbox"/> Property	<input type="checkbox"/> Exercise of religion	<input type="checkbox"/> Retaliation
<input type="checkbox"/> Excessive force by an officer	<input checked="" type="checkbox"/> Threat to safety	<input type="checkbox"/> Other: _____	

3. Supporting Facts. State as briefly as possible the FACTS supporting Claim I. Describe exactly what **each Defendant** did or did not do that violated your rights. State the facts clearly in your own words without citing legal authority or arguments.

The staff at Corcoran California Substance abuse Treatment facility let the housing in Building three on E yard degrade so far as living conditions that it is uninhabitable. The ceiling leaks with no signs posted I slipped and fell injuring my back which still ails me. The cells in building three fill with water from the slightest rain and should have never been allowed if properly governed to degrade to such a severe state. Any staff that witnessed the level of deterioration and did not report it is neglecting his or her duty between the days of 8-15-21 and 10-25-21. While at North Kern State Prison on D yard from 10-14-20 - 05-14-21 the entire building in Both 4 and 5 Block filled with water several inches deep from the slightest rain, several times causing sever depression in regard to my surroundings, and illness. On E yard SATE the Chow Hall leaks and on several occasions got on me and my food.

4. Injury. State how you were injured by the actions or inactions of the Defendant(s).

I slipped and fell injuring my neck and back my back still ails me.

5. Administrative Remedies:

a. Are there any administrative remedies (grievance procedures or administrative appeals) available at your institution? Yes No

b. Did you submit a request for administrative relief on Claim I? Yes No

c. Did you appeal your request for relief on Claim I to the highest level? Yes No

d. If you did not submit or appeal a request for administrative relief at any level, briefly explain why you did not. *I was in crisis bed due to retaliation and could not respond to the second level. Staff falsified dates to prevent litigation.*

E. REQUEST FOR RELIEF

State the relief you are seeking:

\$100,000, Fix facilities leaks in Buildings and cells
and Cafeterias.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 7-12-22
DATE

David Waco
SIGNATURE OF PLAINTIFF

(Name and title of paralegal, legal assistant, or
other person who helped prepare this complaint)

(Signature of attorney, if any)

(Attorney's address & telephone number)

ADDITIONAL PAGES

All questions must be answered concisely in the proper space on the form. If you need more space you may attach more pages, but you are strongly encouraged to limit your complaint to twenty-five pages. If you attach additional pages, be sure to identify which section of the complaint is being continued and number all pages. Remember, there is no need to attach exhibits to your complaint.

**CLAIM FOR DAMAGE
INJURY, OR DEATH**

Case 2:22-cv-01272-CKD Document 1 Filed 07/18/22 Page 5 of 6

INSTRUCTIONS: Please read carefully the instructions on the reverse side of this form. If you need more information than can be given on this form, use additional sheet(s) if necessary. See reverse side for additional instructions.

**FORM APPROVED
OMB NO. 1105-0008**

1. Submit to Appropriate Federal Agency:		2. Name, address of claimant, and claimant's personal representative if any. (See instructions on reverse). Number, Street, City, State, and Zip code.		
		<p>David William Wucci AR-7739 7707 Austin RD Stockton, CA 95215</p>		
3. TYPE OF EMPLOYMENT	4. DATE OF BIRTH	5. MARITAL STATUS	6. DATE AND DAY OF ACCIDENT	7. TIME (A.M. OR P.M.)
<input type="checkbox"/> MILITARY <input checked="" type="checkbox"/> CIVILIAN	4-5-90	Single	8-15-21	12:45 PM
8. BASIS OF CLAIM (State in detail the known facts and circumstances attending the damage, injury, or death, identifying persons and property involved; the place of occurrence and the cause thereof. Use additional pages if necessary). On 8-15-21 at 12:45 PM I was walking in the dayroom of B-3 (Building 3 on E yard at California Substance Abuse Treatment Facility) a California State Prison. I was intending to return to my cell, cell 246 when I slipped and fell due to water leaking from the ceiling. Bodycam footage will support my claim as well as witnesses.				

9. PROPERTY DAMAGE
NAME AND ADDRESS OF OWNER, IF OTHER THAN CLAIMANT (Number, Street, City, State, and Zip Code).
BRIEFLY DESCRIBE THE PROPERTY, NATURE AND EXTENT OF THE DAMAGE AND THE LOCATION OF WHERE THE PROPERTY MAY BE INSPECTED. (See instructions on reverse side).

10. PERSONAL INJURY/WRONGFUL DEATH
STATE THE NATURE AND EXTENT OF EACH INJURY OR CAUSE OF DEATH WHICH FORMS THE BASIS OF THE CLAIM. (IE OTHER THAN CLAIMANT, STATE THE NAME OF THE INJURED PERSON OR DECEASED)
Damage to Mental health through retaliation Bruising to lower back Slip and fall Depression

11. WITNESSES	
NAME	ADDRESS (Number, Street, City, State, and Zip Code)
Daniel Simonian JS-5476 Felix F. Nicolas AS-2613	Daniel Simonian JS 5476 Felix F. Nicolas AS 2613 CDCR P.O. Box 5242 Contra Costa, CA 945212

12. (See instructions on reverse).	AMOUNT OF CLAIM (in dollars)		
12a. PROPERTY DAMAGE	12b. PERSONAL INJURY	12c. WRONGFUL DEATH	12d. TOTAL (Failure to specify may cause forfeiture of your rights).
	100,000.00		100,000.00

I CERTIFY THAT THE AMOUNT OF CLAIM COVERS ONLY DAMAGES AND INJURIES CAUSED BY THE INCIDENT ABOVE AND AGREE TO ACCEPT SAID AMOUNT IN FULL SATISFACTION AND FINAL SETTLEMENT OF THIS CLAIM.

13a. SIGNATURE OF CLAIMANT (See instructions on reverse side).	13b. PHONE NUMBER OF PERSON SIGNING FORM	14. DATE OF SIGNATURE
		6-23-22

CIVIL PENALTY FOR PRESENTING FRAUDULENT CLAIM	CRIMINAL PENALTY FOR PRESENTING FRAUDULENT CLAIM OR MAKING FALSE STATEMENTS
The claimant is liable to the United States Government for a civil penalty of not less than \$5,000 and not more than \$10,000, plus 3 times the amount of damages sustained by the Government. (See 31 U.S.C. 3729.)	Fine, imprisonment, or both. (See 18 U.S.C. 287, 1001.)

INSURANCE COVERAGE

Case 2:22-cv-01272-CKD Document 1 Filed 07/18/22 Page 6 of 6

In order that subrogation claims may be adjudicated, it is essential that the claimant provide the following information regarding the insurance coverage of the vehicle or property.

15. Do you carry accident insurance? Yes If yes, give name and address of insurance company (Number, Street, City, State, and Zip Code) and policy number. No

16. Have you filed a claim with your insurance carrier in this instance, and if so, is it full coverage or deductible? Yes No

17. If deductible, state amount:

18. If a claim has been filed with your carrier, what action has your insurer taken or proposed to take with reference to your claim? (It is necessary that you ascertain these facts).

19. Do you carry public liability and property damage insurance? Yes If yes, give name and address of insurance carrier (Number, Street, City, State, and Zip Code). No

INSTRUCTIONS

Claims presented under the Federal Tort Claims Act should be submitted directly to the "appropriate Federal agency" whose employee(s) was involved in the incident. If the incident involves more than one claimant, each claimant should submit a separate claim form.

Complete all items - Insert the word NONE where applicable.

A CLAIM SHALL BE DEEMED TO HAVE BEEN PRESENTED WHEN A FEDERAL AGENCY RECEIVES FROM A CLAIMANT, HIS DULY AUTHORIZED AGENT, OR LEGAL REPRESENTATIVE, AN EXECUTED STANDARD FORM OF OTHER WRITTEN NOTIFICATION OF AN INCIDENT, ACCOMPANIED BY A CLAIM FOR MONEY.

DAMAGES IN A SUM CERTAIN FOR INJURY TO OR LOSS OF PROPERTY, PERSONAL INJURY, OR DEATH ALLEGED TO HAVE OCCURRED BY REASON OF THE INCIDENT. THE CLAIM MUST BE PRESENTED TO THE APPROPRIATE FEDERAL AGENCY WITHIN TWO YEARS AFTER THE CLAIM ACCRUES.

Failure to completely execute this form or to supply the requested material within two years from the date the claim accrued may render your claim invalid. A claim is deemed presented when it is received by the appropriate agency, not when it is mailed.

If instruction is needed in completing this form, the agency listed in item #1 on the reverse side may be contacted. Complete regulations pertaining to claims asserted under the Federal Tort Claims Act can be found in Title 28, Code of Federal Regulations, Part 14. Many agencies have published supplementing regulations. If more than one agency is involved, please state each agency.

The claim may be filed by a duly authorized agent or other legal representative, provided evidence satisfactory to the Government is submitted with the claim establishing express authority to act for the claimant. A claim presented by an agent or legal representative must be presented in the name of the claimant. If the claim is signed by the agent or legal representative, it must show the title or legal capacity of the person signing and be accompanied by evidence of his/her authority to present a claim on behalf of the claimant as agent, executor, administrator, parent, guardian or other representative.

If claimant intends to file for both personal injury and property damage, the amount for each must be shown in Item number 12 of this form.

The amount claimed should be substantiated by competent evidence as follows:

(a) In support of the claim for personal injury or death, the claimant should submit a written report by the attending physician, showing the nature and extent of the injury, the nature and extent of treatment, the degree of permanent disability, if any, the prognosis, and the period of hospitalization, or incapacitation, attaching itemized bills for medical, hospital, or burial expenses actually incurred.

(b) In support of claims for damage to property, which has been or can be economically repaired, the claimant should submit at least two itemized signed statements or estimates by reliable, disinterested concern, or, if payment has been made, the itemized signed receipts evidencing payment.

(c) In support of claims for damage to property which is not economically repairable, or if the property is lost or destroyed, the claimant should submit statements as to the original cost of the property, the date of purchase, and the value of the property, both before and after the accident. Such statements should be by disinterested competent persons, preferably reputable dealers or officials familiar with the type of property damaged, or by two or more competitive bidders, and should be certified as being just and correct.

(d) Failure to specify a sum certain will render your claim invalid and may result in forfeiture of your rights.

PRIVACY ACT NOTICE

This Notice is provided in accordance with the Privacy Act, 5 U.S.C. 552a(e)(3), and concerns the information requested in the letter to which this Notice is attached.

A. **Authority:** The requested information is solicited pursuant to one or more of the following: 5 U.S.C. 301, 28 U.S.C. 501 et seq., 28 U.S.C. 2671 et seq., 28 C.F.R. Part 14.

B. **Principal Purpose:** The information requested is to be used in evaluating claims.
C. **Routine Use:** See the Notices of Systems of Records for the agency to whom you are submitting this form for this information.

D. **Effect of Failure to Respond:** Disclosure is voluntary. However, failure to supply the requested information or to execute the form may render your claim "invalid."

PAPERWORK REDUCTION ACT NOTICE

This notice is solely for the purpose of the Paperwork Reduction Act, 44 U.S.C. 3501. Public reporting burden for this collection of information is estimated to average 6 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Director, Tort Branch, Attention: Paperwork Reduction Staff, Civil Division, U.S. Department of Justice, Washington, DC 20530 or to the Office of Management and Budget. Do not mail completed form(s) to these addresses.